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9 Attorneys for Defendant
10 PLAYTEX PRODUCTS, INC.

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 DAVID PAZ, an individual and on
14 behalf of all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 PLAYTEX PRODUCTS, INC., a
19 Delaware Corporation, and Does 1
20 through 100, inclusive

21 Defendants.

CASE NO.: 07CV2133 JM (BLM)

Honorable Jeffrey T. Miller
Courtroom 16

**DEFENDANT PLAYTEX
PRODUCTS, INC.'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT [FRCP 12(b)(6)]**

**[Filed Concurrently With
Memorandum Of Points And
Authorities In Support Thereof;
Declaration of Brenda Liistro In
Support Of Motion To Dismiss;
Declaration of Ellen Darling In
Support Of Motion To Dismiss]**

Date: 12/28/07
Time: 1:30 p.m.
Courtroom: 16

Date of Removal: 11/07/07
Trial Date: None

22 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE THAT on December 28, 2007, at 1:30 p.m., or as
24 soon thereafter as the matter may be heard in Courtroom 16 of the above-entitled
25 court, located at 940 Front Street, San Diego, California, 92101, Defendant Playtex
26 Products, Inc. ("Playtex") through its counsel, Snell & Wilmer LLP, will move to
27
28

553807.3

Case No. 07CV2133 JM (BLM)

PLAYTEX'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT

1 dismiss Plaintiff's Complaint in its entirety, without leave to amend, on the grounds
2 that all of his causes of action fail as a matter of law.

3 This Motion to Dismiss is made pursuant to Federal Rule of Civil Procedure
4 12(b)(6) on the grounds that Plaintiff's Complaint fails to state a claim upon which
5 relief may be granted against Playtex.

6 Plaintiff's Complaint does not set forth a single fact that establishes any
7 cause of action against Playtex. Specifically, Plaintiff fails to plead facts necessary
8 to give Playtex notice about which of its spill-proof cups are at issue in this lawsuit.
9 Not only is Plaintiff required to give Playtex this notice, but to the extent that
10 Plaintiff purchased cups that contain parts that were entirely or substantially made,
11 manufactured and produced in the United States, all of Plaintiff's claims fail as a
12 matter of law and cannot be cured by amendment. Cal. Bus. & Prof. Code
13 § 17533.7.

14 Along the same lines, all of Plaintiff's causes of action are grounded in fraud;
15 however, Plaintiff fails to plead the facts necessary to satisfy the heightened
16 pleading requirements applicable to claims for fraud, as set forth by Fed. R. Civ.
17 P. 9(b).

18 Additionally, Plaintiff lacks standing under the Unfair Competition Law, the
19 False Advertising Law, and the Consumer Legal Remedies Act because Plaintiff
20 does not allege any injury or plead any facts to support any "injury in fact."
21 Plaintiff's CLRA claims further fail because Plaintiff failed to provide sufficient
22 notice of the alleged violations pursuant to California Civil Code section 1782(a),
23 and to comply with the specific pleading requirements set forth in section 1780(c).

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1 This Motion to Dismiss is based on this Notice of Motion and Motion, the
2 Memorandum of Points and Authorities, the Declarations of Brenda Liistro and
3 Ellen Darling, the pleadings and papers on file in this action, and such other
4 arguments as may be properly received by the Court.

5
6 Dated: November 13, 2007

SNELL & WILMER L.L.P.

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8 By: /s//Samantha K. Feld

9 Ellen L. Darling
10 Samantha K. Feld
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12 PLAYTEX PRODUCTS, INC.
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